

- (1) Whether claimant met with personal injury or occupational disease by a series of accidents or exposures through July 21, 1995.
- (2) Whether claimant's accidental injury or occupational disease arose out of and in the course of her employment with respondent.
- (3) The nature and extent of claimant's injury and/or disability.
- (4) Claimant's average weekly wage.

(5) Medical Issues.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After having reviewed the entire record, the Appeals Board makes the following findings of fact and conclusions of law:

The Appeals Board finds that the Award of the Administrative Law Judge sets out findings of fact and conclusions of law in some detail and it is not necessary to repeat those herein. The findings and conclusions enumerated in the Award of the Administrative Law Judge are both accurate and appropriate and the Appeals Board adopts same as its own findings and conclusions as if specifically set forth herein.

The Administrative Law Judge denied claimant benefits, finding claimant had failed to prove by a preponderance of the credible evidence that her scleroderma was caused or contributed to by her employment with respondent. Claimant had been employed with respondent for more than 28 years. In 1995 claimant was working on a regular basis with a chemical substance identified as SDS-28. This chemical was used to sterilize equipment for surgery. In April 1995, claimant began experiencing fatigue. After undergoing a physical examination she was diagnosed with scleroderma, which is a connective tissue disease characterized by thickening of the skin on the extremities, and interstitial fibrosis of the esophagitis. Claimant came under the treatment of Edward N. Letourneau, M.D., a rheumatologist board certified in internal medicine and board eligible in rheumatology. Dr. Letourneau had been involved in the treatment of approximately 12-20 scleroderma patients including claimant. While Dr. Letourneau attempted to connect the SDS-28 to claimant's ongoing scleroderma, he acknowledged that the chemical components in SDS-28 had never been scientifically determined to cause scleroderma.

Respondent presented the testimony of Virginia Steen, M.D., board certified in internal medicine and rheumatology. Dr. Steen had been involved in the diagnosis and treatment of scleroderma patients for many years having treated over 1,000 patients with the diagnosis of scleroderma. Dr. Steen verified Dr. Letourneau's opinion that SDS-28 had never been connected scientifically to the cause of scleroderma. She went on to opine that the development of scleroderma involved many factors and many causative agents and there was nothing in the medical literature or the tests performed on claimant to connect claimant's development of scleroderma to the content of SDS-28.

In proceedings under the Workers Compensation Act, the burden of proof is on claimant to establish claimant's right to an award of compensation by proving the various conditions upon which claimant's right depends. This burden must be established by a preponderance of the credible evidence. See K.S.A. 44-501 and K.S.A. 44-508(g). In order for claimant to carry this burden, she must prove that her scleroderma condition, diagnosed by both Dr. Letourneau and Dr. Steen, resulted from either accidental injury or occupational disease arising out of and in the course of her employment. The medical evidence in this case supports the Administrative Law Judge's denial of benefits as Dr. Letourneau's speculative opinion regarding causation is not sufficient to overcome the expert opinion of Dr. Steen regarding the causational factors leading up to development of scleroderma in the claimant. As such the Appeals Board finds the Award of Administrative Law Judge Bruce E. Moore denying claimant benefits should be affirmed.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Bruce E. Moore dated March 7, 1997, should be, and is hereby, affirmed and claimant is denied an award of compensation against respondent in accordance with the above findings.

In so finding the additional issues raised by claimant are rendered moot.

The fees necessary to defray the expense of the administration of the Workers Compensation Act are hereby assessed against the respondent to be paid as follows:

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| Owens, Brake, Cowan & Associates | |
| Regular Hearing | \$269.50 |
| Dated October 9, 1996 | |
| Appino & Biggs Reporting Service | |
| Deposition of Dr. Edward Letourneau | \$225.40 |
| Dated November 11, 1996 | |
| Friedli Wolff & Pastore Inc. | |
| Deposition of Dr. Virginia Steen | \$535.75 |
| Dated November 25, 1996 | |

IT IS SO ORDERED.

Dated this ____ day of July 1997.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Jeff K. Cooper, Topeka, KS
Jeffrey E. King, Salina, KS
Bruce E. Moore, Administrative Law Judge
Philip S. Harness, Director